Supreme Court, U.S.
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No. 99-1079

In The

Supreme Court of the United States

URVASHI B. PATEL, an individual,

Petitioner,

v.

OMH MEDICAL CENTER, INC., an Oklahoma corporation, ST. FRANCIS HOSPITAL, INC., an Oklahoma corporation and JOHN B. STEVENS, an individual,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Oklahoma

PETITIONER'S REPLY BRIEF

CLIFFORD N. RIBNER
Counsel of Record
320 South Boston, Suite 1130
Tulsa, OK 74103
(918) 582-9200
Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED FOR REVIEW

I. Does the principle of *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) – that once a court determines, as a factual matter, that one of its judgments was obtained, in whole or in part, through the use of attorney-complicit fraud practiced on such court by the prevailing party and its attorney, such court must order the vacation of such judgment for that reason alone, without further inquiry into any other matter (such as whether such fraud was outcome-determinative, the diligence and good faith of the non-prevailing party in investigating and discovering such fraud, laches or statute of limitations) – represent a requirement of constitutional due process in all civil cases, Petitioner's right to which the Oklahoma Supreme Court violated by ordering the reversal of the trial court's order vacating a judgment favorable to Respondents through the use of such attorney-complicit fraud practiced by them on the Petitioner, on such trial court and on the jury in this case?

II. Was Petitioner deprived of her constitutional right to procedural due process when the Oklahoma Supreme Court ruled that the trial court's undisturbed finding that Respondents had obtained a judgment adverse to certain of Petitioner's claims against them through the use of knowing fraud, effected with the active complicity of their attorneys, which deceived such trial court judge herself, the Petitioner and the jury, was an insufficient basis for such judge to vacate such judgment, and that in order to vacate such, Petitioner bore the *additional* burden of proving each of the following: (1) Show that she acted

QUESTION PRESENTED FOR REVIEW – Continued

without delay in asserting her rights after discovery the fraud, (2) establish that she used diligence in the original action in trying to discover and expose the fraud, and (3) demonstrate that there is a substantial likelihood that a new trial will have a different result.

III. Did the Oklahoma Supreme Court violate Petitioner's constitutional right to procedural due process in ruling that Respondents may be allowed to retain the fruits of a judgment adverse to Petitioner's claims against them obtained by them through fraud, in which fraud Respondents' attorney was actively and knowingly complicit, *solely* because such fraud, and its continuing concealment by Respondents and their attorneys, were not discovered and proven by Petitioner until after the earlier judgment became final, whereas such attorney-complicit fraud would have been sufficient, according to the Oklahoma Supreme Court, to permit the imposition of extreme sanctions, including the entry of default judgment against Respondents, had it been discovered by Petitioner prior thereto?

PARTIES TO THE PROCEEDING

Petitioner, Urvashi B. Patel, was the Plaintiff and the Appellee in the Courts below.

Respondents, OMH Medical Center, Inc., St. Francis Hospital, Inc., and John B. Stevens were the Defendants and the Appellants in the Courts below.

There are no other parties to this action.

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PETITIONER'S REPLY BRIEF

Petitioner, Dr. Urvashi B. Patel, submits this Reply Brief under S. Ct. R. 15 to address arguments first raised in the Respondents' Brief in Opposition (the "Opp. Br.").

STATEMENT OF JURISDICTION

In their Brief in Opposition, Respondents apparently concede the applicability of the prior decisions of this Court discussed in footnote 1 on pages 1 and 2 of the Petition for Writ of Certiorari (the "Pet.") which clearly establish that this Court has jurisdiction under 28 U.S.C. § 1257(a) here. Nevertheless, Respondents dispute this Court's jurisdiction here on other grounds, which are replied to below.

STATEMENT OF THE CASE

Respondents claim that the Oklahoma Supreme Court unambiguously rejected the Trial Court's fact finding of their attorney-complicit fraud and that such rejection had a sound evidentiary and constitutional basis. In support of such claim, on which their argument depends, Respondents and their attorneys – still Larry Henry's law firm, operating under a changed name, in which Larry Henry remains a member – seriously misrepresent the entire Record, including both lower court opinions in this case. Petitioner hereby corrects a number of such misrepresentations.

A. *"PATEL I"* AND THE TRIAL COURT'S RULING IN *"PATEL II"*

Respondents repeatedly deny in their Brief that they admitted the fact of their attempted extortion at the *Patel I* trial. In fact, Respondent, John B. Stevens, on his own behalf and on behalf of the remaining Respondents whose agent he was, testified at trial as follows:

> Q: [by Mr. Ribner] I am asking was your – were you conveying to her [Dr. Patel] in that conversation of October 2, the concept that her references would be the same regardless whether she waived the fee?
>
> A: [by Mr. Stevens] No. that was not the concept.
>
> Q: So the concept was that her references would be different if she waived the fee?
>
> A: Yes. Yes. Yes. Uh huh. Yes they would be.

(R. 36, Piles trial transcript 523)

Respondents attempt to argue that their Exhibit 1 had, at most, a minimal effect and, that Petitioner had more than ample opportunity to cast doubt on its substance, at trial. (Opp. Br. 4-6) Nothing could be further from the truth. Among other uses, Exhibit 1 was read aloud by Respondents at trial to confront Petitioner with, and force her nakedly to deny, the false accusations contained therein (R. 36, Piles transcript 700-706, R. 193-199). Only Respondents' fraudulent concealment of the document probative of Petitioner's position made such tactic possible. The Trial Court ultimately ruled, in her Order in this case, that such document was indeed contained in Petitioner's file, specifically referred to such Exhibit 1

and refuted it. (Pet. App. 46a-47a). The specific fraud on her, the Petitioner and jury which the Trial Court found in fact occurred was Mr. Henry's express denial that any such refuting document – or even any document referring to Exhibit 1 – existed ("There is nothing in the file of that nature," Mr. Henry lied. Pet. App. 46a). Mr. Henry never subsequently attempted to correct such false statement.

Such findings of Respondents' fraudulent concealment by the Trial Court are statements of objective fact describing documents contained in the Record (R. 134-240), the very existence of which Mr. Henry expressly, on the record, fraudulently, denied to Petitioner and the Trial Court (Pet. App. 45a-47a), findings which no subsequent, additional "evidentiary" hearing in this case could disprove.

On page 7 of their Brief, Respondents misrepresent the bench conference which was described accurately in Judge Wiseman's Order (Pet. App. 44a-48a).

B. *"PATEL II"* DISCOVERY

Respondents misrepresent other evidence discovered by Petitioner in this case which was also before the Trial Court when she made her findings of their knowing, deliberate attorney-complicit fraud. (Opp. Br. 6-8). Respondents pretend that Karen Legg's deposition testimony cast doubt on the fraudulence of Mr. Henry's representations to the Trial Court and that Respondents had properly responded to all discovery Petitioner had served on them both prior to the *Patel I* trial and in this case, implicitly claiming that no such discovery would have led to the production of Defendants' Exhibit 1 and the

refuting memorandum attached thereto described in the Trial Court Opinion in *Patel II*. (Opp. Br. 7). Nothing could be further from the truth.

Contrary to Respondents' contention, Ms. Legg specifically testified – and so made an admission on behalf of her employer, Respondent OMH – that Ms. Legg's memorandum referencing and refuting Defendants' Exhibit 1 described in Judge Wiseman's Order (Pet. App. 46a) was put together with numerous other documents and, indeed, physically "attached" (R. 238, 5-6) to Defendants' Exhibit 1 by Ms. Legg herself. (R. 159, 223-238).

Concerning Respondents' pre-trial responses to discovery which would have led to Petitioner's discovery of such memorandum authored by Ms. Legg and Defendants' Exhibit 1 itself: *both* such documents were specifically described or referred to in the Minutes of Committees of Respondent OMH's Board (R. 313-318). Respondents and Mr. Henry concealed the existence of such Minutes from Petitioner even while purporting to respond, without objection, to discovery requests from Petitioner to which such Minutes clearly would have been responsive, which discovery requests were made to them over one year prior to trial (R. 407-410). Petitioner only obtained such Minutes when she learned of their existence during Ms. Legg's deposition after this case – *Patel II* – was commenced. (R. 281-335).

The concealed Committee Minutes describe with particularity the fact that the OMH Board specifically considered and totally dismissed the contents of Defendants' Exhibit 1 – described as "a negative reference" therein – before OMH granted Petitioner privileges, based on

information contained in "a summary of the telephone conversation with Dr. Parkes [sic]." (R. 314). Such "summary" of that telephone conversation is the very document whose existence Mr. Henry fraudulently concealed from Petitioner and the Trial Court at the bench conference, which fraudulent concealment the Trial Court expressly relied on in entering her Order in *Patel II*.

Respondents go on to misrepresent (notably, without actually quoting, either in the text or the Appendix to their Brief) Mr. Henry's extraordinary two affidavits – which were also before the Trial Court prior to her entering her Order. (Opp. Br. 7-8). In fact, in such affidavits, Mr. Henry, while gratuitously denying an intention to defraud, admits that his answers to the Trial Court's questions at trial were not accurate, coupled with a (no doubt inadvertent) admission of why he had thought he could get away with it ("These references are confidential in nature, so no one outside OMH should have seen any references . . . ", he said.) (R. 353).

Respondents misrepresent both the substance of Judge Wiseman's *Patel II* Order (Pet. App. 44a-48a) and the hearing and other proceedings on which it was based. (Opp. Br. p. 1, ftnt. 1, pp. 4-9). Contrary to Respondents' claim, such Order did not simply derive from oral arguments by the parties. The parties submitted literally hundreds of pages of documentary evidence to the Trial Court, including Ms. Legg's deposition, OMH's entire file on Petitioner, which included Defendants' Exhibit 1, the OMH Board's Committee Minutes Respondents had concealed from Petitioner prior to trial, described above, Mr. Henry's affidavits and the trial transcripts. Even the briefs Respondents submitted were co-authored by Mr.

Henry himself, therefore constituting additional admissions of an interested party, rather than mere argument by independent counsel. Judge Wiseman's Order was, of course, also based on her own personal knowledge of all such matters, including the effect of Respondents' fraud on her and the jury, to which she was, herself, necessarily a witness.

Respondents do not dispute the facts, quoted at Pet. 7, ftnt. 2, that in the principal hearing in this case Judge Wiseman expressly invited them to offer whatever other evidence or argument they wished without limitation and that she considered "the case" submitted, and not simply a summary judgment motion.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE OKLAHOMA SUPREME COURT IS A FINAL JUDGMENT.

Respondents claim that the decision of the Oklahoma Supreme Court is not sufficiently final to permit this Court's jurisdiction. They do so principally by claiming that the Oklahoma Supreme Court has indeed unambiguously "disturbed" the Trial Court's fact finding of Respondents' attorney-complicit fraud and has ordered the Trial Court to reconsider *that* question, in addition to questions regarding Petitioner's diligence in investigating such fraud and its outcome-determinitiveness, on remand.

In claimed support for this allegation, Respondents repeatedly (Opp. Br. 1, ftnt. 1, pp. 12, 15, 26-27) ask this

Court to focus solely on statements in ¶¶ 41 and 42 of the Oklahoma Supreme Court's Opinion (Pet. App. 35a-36a).

At most, such passages are ambiguous in this regard. They come closest to supporting Respondents' position in providing that "In the [Quaere: meaning *this* or this *type* of?] vacation proceeding . . . the [Quaere: meaning the Supreme, any or *this* trial?] court is called upon to determine issues *relating to* fraud . . . [emphasis added]" Textually, even such extraordinarily unclear language at most may refer to questions of the materiality and discoverability of the fraud, which questions indeed "relate to," but are not, the fact of the fraud itself. Equally ambiguous is language contained in ¶ 21 of the Oklahoma Supreme Court Opinion (Pet. App. 17a-18a), unmentioned by Respondents, in which that Court states Respondents are entitled to an evidentiary hearing, but without specifying, let alone suggesting, that the question of fraud itself should be reconsidered in a second such hearing on remand.

However, the Oklahoma Supreme Court resolves all ambiguities in this regard in ¶ 48 of its Opinion – its official Summary (Pet. App. 40a-41a) – which Respondents' argument, of necessity, completely ignores. There alone it specifically describes exactly what "it remains for [Petitioner] to convince the [Trial Court] . . . " of on remand in order to obtain vacation of the *Patel I* Judgment: it specifies there solely the additional questions which its decision unconstitutionally requires of Petitioner and not the fact of Respondents' attorney-complicit fraud itself. (Pet. App. 41a). Additionally, nowhere in its Opinion does the Oklahoma Supreme Court suggest that

the evidence supporting the Trial Court's fact finding of Respondents' fraud is insufficient to support such.

Thus, Respondents' claim that the Oklahoma Supreme Court unambiguously repudiated the Trial Court's fact-finding of Respondents' attorney-complicit fraud is textually unsupportable (Pet. App. 40a-41a) as is, accordingly, the entire argument in their Brief.

Respondents were in fact accorded ever opportunity to present the Trial Court with whatever evidence or argument they wished without limitation by her prior to her ruling. Such ruling was based on all evidence which conceivably could apply to its substance – the undeniable fact of Mr. Henry's unambiguous denial of the existence of a critical document which the Trial Court found indeed existed in the precise place – Petitioner's credentials file – where Mr. Henry represented it did not exist. The Trial Court determined that she, the finder of fact, had seen enough evidence and argument to make her decision, her findings related solely to Mr. Henry's knowing representations about documents, all of which were before her, whose existence Mr. Henry had expressly denied at the bench conference, the transcript of which was also before her, during a trial over which she had herself presided, with the unique ability, as a witness, to ascertain the effect on her and the jury of Mr. Henry's patently false statements regarding such documents.

Accordingly, any suggestion by the Oklahoma Supreme Court that such hearing was insufficient for federal due process purposes would be clearly-reversible, patent nonsense.

To whatever extent that Court could, even *arguendo*, be read to have so ruled and, based on such ruling, rejected the Trial Court's fact finding of Respondents' fraud itself, such would clearly be an insufficient justification for the truly serious abridgement of Petitioner's competing due process rights which would result from affording Respondents additional hearings on the question of their fraud, let along on the remaining, unconstitutionally-required questions mandated by it. Though Respondents complain that Petitioner has not specifically posed as an error presented for review the Oklahoma Supreme Court's (claimed) ruling that Respondents' due process rights were (or may have been) violated by a constitutionally-infirm hearing in the Trial Court, it is clear that such would "comprise a subsidiary question" fairly included within Questions Presented For Review Nos. 1 and 3. S. Ct. R. 14(1)(a).

Additionally, under *Hazel-Atlas Glass Co.*, the Trial Court must be empowered to cleanse itself of fraud perpetrated on it in the absence of an unambiguous, supportable finding by the Oklahoma Supreme Court that the evidence before the Trial Court in finding such fraud was manifestly insufficient. Whatever the Oklahoma Supreme Court Opinion says, it does not say that, nor could it.

It is clear that due process requires granting Respondents no further hearings – "evidentiary" or otherwise – concerning the clearly-documented – indeed irrefutable – fact of their fraud, which fact, in ¶ 48 of its Opinion, the Oklahoma Supreme Court tacitly admits has indeed already been conclusively proven.

II. RESPONDENTS' FRAUD DEPRIVED PETITIONER OF CONSTITUTIONALLY-PROTECTED PROPERTY.

Respondents' principal claim that due process considerations are irrelevant to this case derives from their claim, apparently advanced in all seriousness, that a lawsuit is simply not a constitutionally-protected property interest. In fact, this Court has long recognized that a lawsuit is indeed a "chose in action" which constitutes "a protected property interest in its own right." *Richards v. Jefferson Co., Ala.*, 517 U.S. 793, 804 (1996).

Respectfully submitted,

CLIFFORD N. RIBNER
Counsel of Record
320 South Boston, Suite 1130
Tulsa, OK 74103
(918) 582-9200

Counsel for Petitioner

February, 2000